

**Minutes of the
Meeting of the Construction Board of Appeals
City of Edina, Minnesota
Mayor's Conference Room
March 6, 2015
7:30 AM**

I. Call to Order

II. Roll Call

Members Present: Doug Hall, Jennifer Carlson, Scott Busyn, Kip Peterson

Members Absent: Tim Cross

City Staff Present: Chief Building Official David Fisher, Permit Tech Judy Laufenburger, City Attorney Roger Knutson

Guests: Applicants Jim & Lori Grotz, resident Heather Biel, Building Contractors Mike Sullivan & Travis Anderson w/The New Old House Co, Mike Eckardt, Arcos Architects

III. Approval of Meeting Agenda

Board Member Scott Busyn moved to approve the agenda, Board member Jennifer Carlson seconded the motion. All voted aye; motion carried.

IV. Select Board Chair

Board Member Kip Peterson nominated Scott Busyn, Board Member Jennifer Carlson seconded the motion; All voted aye; motion carried.

V. Approval of the Construction Board of Appeal Minutes

Board Member Kip Peterson moved to approve the Board of Appeal's Minutes from the July 23, 2012 meeting. Board Member Jennifer Carlson seconded the motion. All voted aye; motion carried.

VI. Community Comments

Guest, Heather Biel asked how the Board of Appeals was formed & under what circumstances do they meet.

David Fisher explained there is typically a Board in-house at the city level, or it can be deferred to the State if not dealt with in a timely manner. So, if the building official, permit holder, contractor, architect don't agree on something, it is brought before the Board (example: City of

Maplewood had a change of use in occupancy, owner disagreed, it was appealed, there was a Board of Appeals hearing, five members voted on the appeal after some discussion). Usually there is a dedicated Building Official for any given city, someone assigned by their City Council or City Manager. There is an opportunity to submit application for an appeal, but there is an attempt to resolve the issue before it goes to the Board.

Ms. Biel commented that this meeting is being tape recorded. Will meeting minutes, audio be made available on our web site? David Fisher replied that written minutes will be made available to the public.

City Attorney, Roger Knutson also included that when someone disagrees with the building code and its interpretation, then they can bring the issue before the board, but it is limited to building code issues, not zoning issues/ordinances. There is a separate Board of Adjustments for zoning.

Lori Grotz asked about Board of Adjustments. The Planning Commission is the Board of Adjustments, per City Attorney, Roger Knutson. Some discussion ensued regarding time limits for appeals. Knutson states that there is a 30-day limit for both Construction Board of Appeals & Board of Adjustments.

VII. Reports/Recommendations

Chief Building Official David Fisher Presented Findings of Fact: See Attachment A

On March 6, 2015, the Edina Construction Board of Appeals (“Board”) met at a Special Meeting to consider the appeal of James Grotz. The appeal was conducted pursuant to the Minnesota State Building Code Rule 1300.0230 and City Code Section 2-362. The Board’s jurisdiction is limited to hearing and deciding appeals of orders, decisions and determinations made by the building official relative to the application and interpretation of the Building Code. Mr. Grotz was present at the Special Meeting. The Board, after considering all pertinent information, makes the following Findings of Fact and Decision:

FINDINGS OF FACT

Mr. Grotz has appealed three decisions of the City’s Building Official, David Fisher, concerning the construction of a single family dwelling on Hennepin County Property ID 19-028-24-11-0012:

Appeal One: Mr. Grotz asserts that two window wells were never built as shown on the approved plans and that “city staff must calculate the revised interior side yard setback.”

Appeal Two: Mr. Grotz asserts that “backfill with clean rock behind wall...” is in direct violation of R403.3.3.

Appeal Three: Mr. Grotz asserts he has a right to obtain a copy of the copyrighted building plans.

DECISION

1. Appeal One is dismissed. This is not a building code issue and is not within the Board's jurisdiction. The required setback was properly calculated by the Planning Department. Revised plans were submitted by the builder for the construction of the window wells. The location of the window wells are in the same location as the original plans for which the building permit was approved.

2. Appeal Two is denied. The window wells are in compliance with the Building Code. The 2007 Minnesota State Building Code (MSBC) R403.3.3 Drainage: "Final grade shall be sloped in accordance with Section R401.3 In other than Group I Soils, as detailed in Table R405.1, gravel or crushed stone beneath horizontal insulation below ground shall drain to daylight or into an approved sewer system." Based on the code the drainage for the window wells are in compliance. The windows wells will have crushed gravel and drain tile that is tied into the foundation drain tile. The foundation drain tile goes to a pump basket that gets pumped to daylight. This is in an approved method.

3. Appeal Three is dismissed. This is not a Building Code issue and is not within the Board's jurisdiction. The plans Mr. Grotz requested are copyrighted. The Minnesota Department of Administration in Advisory Opinion 08-009 has opined that the City cannot make copies of copyrighted plans without the permission of the copyright holder. The copyright holder has not granted Mr. Grotz permission to copy the plans.

Chief Building Official David Fisher presented his staff findings on the three issues before the Board today regarding 1) window well calculations & setbacks, 2) drainage, 3) copyright issues. He explained to the Board and others present that a permit was issued for 5509 Park Place, in October 2014, after being reviewed & approved by all city staff (Planning, Engineering & Building Depts.) Regarding grading & drainage on this plan, the window wells were not exact to the original proposed plan submitted from the builder, he re-submitted a more decorative retaining wall versus a poured wall to the foundation. However, it is in the same location and appears to meet the same contours, based on his findings. Typically, the Planning Department does not review window wells when the plans come in. Window wells are required for egress in existing homes, as well as new construction. So, if a basement bedroom is added, you are required to install an egress window, which goes below grade. Requirements call for a 9 ft. sq. area in order for a fireman with a full pack to get in to the basement, a code requirement for life safety. If we used the average elevation from the bottom of the window well for the average grade for a new home, most of the existing home setbacks would not be in compliance. So, typically they go across the top of the window well (some use plastic covers/they make a cover that can withstand 400 lbs).

David Fisher further stated that his findings are in the document, compiled by City Attorney, Roger Knutson, asking for 1) The zoning issue to be dismissed, 2) Code compliance issue should be denied 3) Dismiss.

David Fisher clarifies the copyright law – if plans are signed or have a copyright symbol displayed on them, they are considered copyrighted. If signed by an architect, documents are

protected. It doesn't mean you can't view them or can't ask for permission from the architect to make copies, but if they are signed by an architect, they are protected and owned by the architect. Most house files are public documents (i.e. surveys, applications for permits, copies of permits issued). Copyrighted plans are public documents to view, but cannot be copied. So, the copyright law is more a State or Federal law and we cannot make decisions about it, therefore this issue should be dismissed. City Attorney Roger Knutson further reiterated that this does not fall under the Building code.

Board member Scott Busyn reiterated that when a building permit is submitted for review and all information is in the Building Dept., (i.e. plans, surveys, and all necessary forms, including a letter which is sent to all residents within 300 ft. of the house being constructed), then any resident or interested party can view the plans. We are not withholding information, other than what can be withheld if it falls under data practice rules. It is not a transparency issue, but purely a copyright issue and protection of that copyright.

David Fisher then directed all present to the information provided in their packet (i.e. revised window well plan, storm water drainage plan with contours in it). He also commented that the plan copy size was reduced, so might be difficult to read for the survey and the contours, but when he looks at the survey and the contours to the plan, based on what the window well shows for the slope on the window well, they match and so he doesn't see that there is a change.

Scott Busyn commented that he reviewed the packet, which contains great detail. He then requested the applicant to give his presentation but to help us by focusing only on the key points.

Applicant, Jim Grotz began his presentation and thanked all present for hearing his appeal. He also states that he assumes this is similar to a public hearing and comments can be made within the three minute time limit. City Attorney Roger Knutson explained that this is not a public hearing and the public is allowed to speak and staff is not limited to three minutes. Scott Busyn also stated that all may speak, if they wish, but limit our comments in the interest of everybody's busy day.

Mr. Grotz states that he is an Edina resident and here today regarding 5509 Park Place. He has been told that IRC 2012 does not apply, nor does Minnesota Residential Code, since the permit application for 5509 Park Pl was from July 31, 2014. He then directs us to the overhead diagram of egress well with ladder, on the south side, as submitted. It shows an 8" concrete egress well with ladder, on both photos, with directions laid out. The south side is toward their house. He shows us another photo, taken from another property by the same builder and that is an 8" concrete window well. It is made out of support concrete, it is durable, it is 8' deep and it meets the requirements for 1st responders to get in and it is going to have a ladder. Additional drawing is from the side and it shows that there will be an 8 ft. concrete window well w/ladder and the east and west are marked. Directing us back to visualize in our minds, he states this is not how 5509 Park Pl was built. He further points out a propane flame thrower and a quick-set by a flame thrower to set concrete. Another shot shows the same type of operation. An additional photo is a piece on cold weather concrete, under extremely cold

conditions, and he was told by someone at the Department of Labor & Industry that this was a good piece to look at, this project in Owatonna was done well and it was cold weather defined. Mr. Grotz further states that provisions define what cold weather is, for how many days, average temperature for 3 days less than 40 degrees. Further, cold weather concrete masonry procedures are defined, where accessible tent or enclosures are required, to be built around the grout and mortar to keep it from freezing for 48 hours, under temperatures of 40 degrees or less.

Mr. Grotz states that on any of the work at 5509 Park Place, there was no heated tent, which would've needed to be present to meet the requirements of the code. He displays a photo of the material that was used at this job site and states that they did not follow the manufacturer's instructions for installation. There is nothing on the web site about curing with a blow torch. An additional opinion was handed out by their engineer, Mr. Eric Zimmerman. He discusses this and states that the rock wall was not protected from subzero temps after the heat was applied. Rocks & mortar froze and acceptable industry practices were not followed. In addition, mortar and/or concrete cannot be quick set with heat. They can be dried out and made non-functional. In his opinion, construction of this wall is in violation of acceptable industry practices, ACI 530, and code requirements for masonry work.

Board member Scott Busyn reiterates to Mr. Grotz that he should focus his presentations on the (3) issues for the appeal only and eliminate further details that are not pertinent to his appeal.

Mr. Grotz continues that the completed stone walls are in question and points out requirements for setbacks. There was an amendment to the construction plan filed, and that changed the original walls that were to be built from the ones he previously showed to the current walls. Going back to his diagram of window well with ladder, he states that City Planner Cary Teague explained to him that the reason it is done this way is, in terms of measurement, is because of the line across the front, and you can't walk across the back side of that window well without falling in, but this is how it's done and is the city's traditional way of doing it.

Mr. Grotz states that applying that same formula to 5509 Park Pl and taking the wall across this, this person needed a variance when he changed the setup for these window wells. They are not as originally designed, there was a change form made for that. As a result, it changed the average grade along the house. There is a letter in his packet that says the significance of the grade calculations directly impacts the building setback requirements from the property. It also points to the midpoint of the gable, gable midpoint to the average grade, it changes that. This brings him to his issue on validity of permit.

In his review from the IRC, Mr. Grotz states that any jurisdiction, (asks us to substitute "jurisdiction" with the "City of Edina"), the government that has adopted this code under due legislative authority and permit is document, having been issued by the authority, having jurisdiction that authorizes performance of specified activity. He also states that in Minnesota rules, permits assuming to give authority to violate or cancel provisions of the code or other ordinances (that means Edina's ordinances), of the jurisdiction, are not valid.

Mr. Grotz explains that the Construction Mgmt. Plan was intended to hold builders accountable for their construction project and minimize impact on adjacent properties. The checklist, developed by the Building Official, states that a completed CMP needs to be signed by a contractor. Once a checklist is required, it becomes a code requirement, under the State building code. By signing, they understand that they are responsible for the conditions listed and it is no longer a construction mgmt. plan, it becomes a construction contract. Under page 2, item 7, storm water & erosion control, it states that the permit holder must adhere to the approved plans. He further states that The New Old House Co. did not sign this contract and therefore it is an invalid permit (if any requirement of the local jurisdiction is not met, which means Edina) it is invalid.

Mr. Grotz adds that another example of that, the survey site plan requirements, scope all required surveys. Since the building official signed this, it has to be on every one of the items. He states that David Fisher exercised his discretion to leave them off, since he exercised discretion to create the form.

Mr. Grotz continues that his letter in October 28, 2014, states that the requirements to obtain a building permit were not met and it was sent to the building official. Additionally, there were changes made along the way, not only the window wells. There was a survey dated Jan 9, 2015 and change form for walls. On the survey, it states proposed catch basin at end of existing pipe. Existing pipe was torn out when the house was demolished, so the change doesn't show any of this. Further, when the design is radically changed and impacts the use of it, it can have zoning implications and must go back to the Planning Commission. In this case, that's what happened and has to go back to the Planning Commission for a variance, in Mr. Grotz's opinion.

He also shows an aerial map of the neighborhood, which also shows the house under construction and their house. Area is a D, built in 1950, common law retaining walls were built to create five buildable lots and to allow homeowners to have flat lots in the back and use them without steep slope to adjoining property.

He further points out a common law retaining wall on their side yard facing to the west, and one facing to the east & that the retaining wall extended all the way up to property boundary. He directs us to a picture of the existing house, lot, and landscaping @ 5509 Park Place (further clarified by Building Official David Fisher) before the house was torn down, as was submitted for permit. Mr. Grotz states that none of this was going to be changed.

Scott Busyn asked if Mr. Grotz is referring to the landscape detail and stone detail in the back lot line before the house was torn down and why this is relevant to the discussion. Mr. Grotz explains it is being shown for drainage purposes.

Board member, Doug Hall, asks what the black pipe is that is displayed in the photo Mr. Grotz is sharing. Mr. Grotz states that there used to be a tree there and it goes to a catch basin.

Mr. Grotz continues that when the contractor submitted his permit, it was shown that the retaining walls in the back would be unchanged. He also shows a photo from his roof and points out a significant difference in elevation from the properties in this area. He also points out the catch basin that Doug Hall was asking about, it was 30", it went to the street, and everything was tiled in the back. Mr. Grotz stated that the builder did not submit this with his permit the way it was being built. Mr. Grotz says that he called the Bldg. Official, David Fisher, and asked if there was a new storm water management plan. Mr. Fisher, in turn, called the builder and asked for a revised plan. He is not building per plan or Construction Management Plan, per Jim Grotz.

Mr. Grotz also displays the new wall going up in the back, with the same approach used on the concrete.

Scott Busyn asks if this is where they rebuilt the wall. Mr. Grotz states that they rebuilt the wall in the back, pushing the existing one way back.

Mr. Grotz then shows the corner area, before backfill and a refers to a letter in packet from their engineer, Mr. Zimmerman, talking about the backfill here (egress), starts out as clay, then backfills with sand, with sandy material along the side and another view of crushed limestone going in later on in construction.

Mr. Grotz explains, as you go thru his slides, that there is this combination of sand in the back and this shelf that was taken out, which is all sand. Looking at the material from a technical perspective, under our 401-3 and 403 -3, and 403.3.3, when you build a house, you are supposed to take the water and slope it away from the foundation. It all comes under the heading of foundation, an item in your packet. The idea is that you don't want the water to go to your foundation. If you get too much water, it will overload your sump pumps, which could be a real problem for the homeowner. In this case, rather than putting on an impervious clay layer on the south side of the property, it is all either sand and/or it is pit run and now will be crushed limestone on the top. If you look at 401.3, it states that you have to grade the house so that the water goes away from it within the first 10 ft. With crushed limestone, the water is going straight down.

Looking at the roof water and the way this has been graded and the way it is proposed to be graded, and because there is clay on their side of the property, when it rains this is all going to go in. David Fisher says this is okay, and it is going to be pumped out, all this water is pumped out through his sump pump.

Mr. Grotz states that this is basically an undocumented storage well and was not engineered, the water will go down there, will be pumped out thru the sump pump. But, sump pumps are a major problem when overloaded. This does not meet code, it is not on the survey plan, and not on the engineered plan, and has not been engineered. This could be a very serious problem. The water is supposed to be kept as ground surface water and taken to the street, not sent to the ground which may cause potential problems, not only for the homeowner, but for their property. Unfortunately, the way this is built, this is what will happen, in his opinion. The crushed limestone is not going to meet the requirements of the code. Also, given the steep grades that are being built, this could be a problem, some of the grades look like they are

better than 2-1. Unfortunately, sump pumps and overruns are a big problem in our city and could cause a lot of damage in a basement, if not taken care of. Look at code, what engineer has stated, because they are concerned about the impact it may have on them, but also the future homeowner, if the property is sold and it is not disclosed by an independent agent.

Also, on the survey it is not documented as a storage volume and don't know if the proposed catch basin is going to be built because of subsequent revisions that do not show it. Mr. Grotz states that their engineer is a geo-technical engineer, has a lot of experience with this, and asks that the Board review his resume, enclosed in the packet.

Lori Grotz states that with the previous grade from the existing retaining wall, the grade behind it was level to the house. So, no water crossed over that. All of the roof drains & back yard water all went to a catch basin, drain tile, and then to the street. They did not get any water. So now with the retaining wall gone, which was 2 ½ ft., the grade of the house on the side is elevated, some areas 2 ½ ft. Now, instead of a level grade between them, now they have a drop of 5 ft., coming straight down at them and nothing will stop it. No gutters or downspouts are shown, the backyard is elevated, the retaining wall in back was moved back, backfilled with approx. 3 ft. of crushed rock to collect water that's coming from the other property and all directed to the south toward them, down to them or in their basement and they will be drowned out.

Mr. Grotz states that he did have another slide that was to be shown from another address, where the prior owner of the property had worked hard to get the former city engineer to get the homeowner upgraded and take water to the street, said he would put a note in the file the next time they get a permit. Now, there is a permit for this address and they don't see anything happening on that address (5504 Dever Dr).

Before Jim & Lori Grotz continue on the 3rd issue before the Board today, Scott Busyn interjects that City Attorney, Roger Knutson has already addressed the copyright issue and feels that their energy could be better focused setting up a separate meeting with the City Attorney. Lori Grotz states that the city did allow previous copies of plans and Scott Busyn states that they may have errored in doing so, but copyright law can be handled separately. Roger Knutson also reassures them that he will review the information on copyright law and if they are, in fact, entitled to make copies, then they will be allowed to do so.

VIII. Correspondence & Petitions

- A. Letter Received February 10, 2015 (copy included in packet)
- B. Letter Received February 20, 2015 (copy included in packet)

IX. Chair, Board Member, Staff Comments

Scott Busyn then invited anyone to add questions/comments, regarding Mr. Grotz presentation, but to please keep within the 3 minute time limit.

Doug Hall asked if the catch basin still remains. Mr. Grotz states that it has been removed, along with the drain tile, with no access to the street.

David Fisher states that before this project started, there was a conversation about the drain tile from the back of the property, the retaining wall with the City Engineering Dept. There was a meeting on site, a design professional submitted a document to the city, and City Engineer Ross Bintner reviewed it and did not accept it, until there were changes made. The drainage is supposed to be going around the north side of the house, not the south side. There is 8-10 ft. on the south side of the house which drains toward that side of the house and does go back down. Re: backfill & drainage, our Engineering Dept. tries to limit water going from neighbor's property and tries to keep it on their property, but you can probably see from the pictures, that some of the topography of the land drained toward their property, probably from even beyond the tree that you saw, from there and back through their property.

Mr. Fisher continues that on the back side of the retaining wall that was seen, there was gravel or landscaping stones and water infiltrates through that, too, which would go through that retaining wall, as well. As far as clean fill & backfill, sand & gravel is the best thing one can use for fill & backfill because water does infiltrate through it. That means it goes into the ground and infiltrates in the ground and doesn't go out to the storm sewer. It dissipates in the ground first, which is a better way to actually displace it. I'm not an engineer, but that is common practice. The drain tile that was there, if plugged, could fail, which is what Engineer Ross Bintner explained. So, the plan was to try and get the drainage to the north side, with topography of the land, in order to make it work better. Jim & Lori Grotz do not agree with that and haven't since day 1. They think the drain tile should be there, as well as the retaining wall put back in place. The builder has stated that possibly the retaining wall will go back in place, but has not decided yet. He may need to do that for better landscaping, but it is still an unknown, since the project is not done yet. The grading & drainage isn't complete yet, so what is seen today is not what's going to be there.

Doug Hall asked for clarification that the retaining wall that may come back is on the south side and David Fisher verified.

Scott Busyn asked for clarification, and David Fisher verified, that there is an engineered storm water plan in the city, submitted & approved by a licensed, professional engineer, Environmental Engineer Ross Bintner. However, the Grotz' engineer disagrees with that plan.

David Fisher further commented that there is language in the code that the drain tile needs to go to daylight. There is drain tile in the house, drain tile in the window well & foundation that goes up to the sump basket and gets pumped out to daylight, which is an approved method. Yes, mechanical equipment can fail but it is an approved method.

Contractor, Mike Sullivan reiterated that it is an approved plan, submitted by an engineer, approved by an independent, and Minnehaha Creek Watershed District. He reassured Jim & Lori Grotz that he does intend to be a good neighbor, making sure that water does not go on to their property, and he will have an approved plan which will be followed.

Scott Busyn states that it sounds like there were a lot of revisions required by the city before approval.

Heather Biel had comments on a resident's appeal process and addresses (2) questions to City Attorney, Roger Knutson. Does the clock re-set when there are major changes in the plan & what is the process if building occurs before a permit is issued and how can a resident contest this issue. She also states that the current notification that takes place from the city is a great improvement to the residents when major changes are going to take place in their neighborhood.

Roger Knutson states that no construction should be taking place before a building permit is issued. Scott Busyn commented that the police may get involved, at that point. David Fisher further addresses the question of working w/out a permit. He states that we issue a stop work order, we request them to get a building permit, and we double fee them for that permit. We definitely hold them accountable for doing what they should do.

Roger Knutson states that it is hard to answer when the clock re-sets, based on what the changes are, (Example: building plans show a 2x4, and now changed to a 1x2, if bring in a revised plan, then the clock re-sets when the revised plan is approved). Further discussion ensued on 5509 Park Place and Heather Biel states that she believes there were major changes that took place from the permit to what was actually happening on site and directed her comments to Mike Sullivan. Mr. Sullivan states that he doesn't believe there were any major changes.

David Fisher states that major changes to a plan, such as changing the elevation or the footprint of the house, would be considered a major change. Landscaping or drainage on the outside would be an engineering question. If it didn't change the topography of the land, and drainage is still the same, it is still an engineering question, not a building code issue. In this case, where they moved the retaining wall back, we did receive a revised plan. Not right away, but after the fact. We made sure that engineering reviewed again and verified that it was ok. If it wasn't ok, then we would've stopped the job and informed them that they need to get it fixed to meet our satisfaction.

Scott Busyn asked for clarification on when the job is completed and requirements on submittal of the as-built survey, as well as when the builder receives a certificate of occupancy. David Fisher clarified that we get an as-built survey for pre-backfill and we get an as-built survey when the job is done. A certificate of occupancy is not given until that as-built survey is provided that the drainage matches. We are trying to slow down giving the cert of occupancy, even a conditional cert of occupancy, to make sure we have the topography. In the wintertime, the landscaping will not be complete. Scott states that there is still an open permit. David Fisher states that once a temporary co is issued, it becomes difficult to take that back. Heather Biel needed clarification as to what if the as-built survey showed that the drainage, building, etc. accomplished as per the original approved & permitted documents and performed as originally designed. David Fisher states that we are requiring our Engineering Department to go out and look at that and verify that the drainage is the way it's supposed to be. It's not what a building inspector looks at.

Lori Grotz commented that if a major change occurs, different than what was submitted, then didn't Mr. Sullivan build the foundation differently from what was submitted. They submitted an as-built, but the as-built was not what was built.

David Fisher explains that, per the building code, it was a very minor change. They put cylinders down. Lori Grotz says that she is referring to the shape of the foundation and David Fisher comments that he is referring to that, too. One part became narrower and much longer. Fisher states that instead of putting a full foundation underneath a landing for an entry in the back, they put cylinders down instead. They used a different style of foundation, so they didn't use a poured wall foundation for that. It would be supported the same way and is considered a minor change.

Mike Eckhart w/ Arcos Architects, working with Mike Sullivan, stated that they went before the Planning Commission in regard to setbacks with the egress wells to verify all the setbacks and regarding height, because height is always an issue when over 15 ft. So, we reviewed that with the city and we actually modified our original submittal, based on comments from the city, and then it was approved. He states that they try to work with the city and realize that they need to meet city requirements, in order to get a permit.

Scott Busyn suggests that we go around the Board, they can ask questions or make comments, and then we try to act on a motion.

Kip Peterson asked re: window wells if there's a building code or city ordinance on determining how to measure final grade. If understanding correctly, because they did a lookout instead of an egress then final grade at outside of the well is 4 ft lower than if they had done an actual egress window.

David Fisher states that it is, in fact, an egress window. It is in the same height and location, but they changed the material. Instead of poured wall window well, now it is a slate wall and that is the only difference. There still could be a ladder out of this, if it is too high or over 44 inches, just like if it was a poured wall. It didn't change, as far as the topography from what can be seen from the contours on the survey. If the windows were lookout originally, that did not change.

Scott Busyn further comments that when we measure the height of the sidewall of a house, we measure from average proposed grade, and is at the foundation., because you want to drop that grade away from the house, in order to achieve as much pitch as you can, and looking at Mr. Grotz slides, there was foundation insulation up (yellow material) where the grade was going to go up to meet that. It has always been at the foundation wall where they measure proposed grade.

David Fisher comments that for an average, they skip over the window well, they don't count the base of the window well, because that could change and be different anywhere. So, an average grade, from point A to point B and it's angled, you take the average in the middle and

you don't take the base of the window well to get that average, according to Cary Teague. You just go straight across.

Kip Peterson states that, based on the materials, his understanding is that Mr. Grotz is disputing that the plan didn't change, because he thinks that the plan originally showed that they were going to be poured walls and level all the way around and now Mr. Grotz is alleging that they are a step down. He feels that if we are measuring grade at the house, and measured over the top of the highest point of the window well at the house, he doesn't think that the material changes anything .

Doug Hall asks, from our engineering perspective, has the topography not changed? David Fisher answers that that is his understanding.

Scott Busyn makes final comments on the three issues that were appealed today.

Window well – side yard setback is a planning decision and reviewed when the permit was issued. Issue on egress well reducing that average, but have always seen calculated at the foundation wall. Egress wells don't reduce it.

On drainage, the plan that Mr. Sullivan has needs to be executed, it is still in process. Busyn stated that he visited the job site and did see some blankets covering up stonework, but the issues on how it is being constructed and best practices, Mr. Sullivan will need to deal with the homeowner, if there are problems. Busyn also clarified with Mr. Sullivan that the catch basin was eliminated, since there is the potential for failure. Mr. Sullivan stated that it was two thirds clogged with sediment and the city doesn't maintain it and it was removed. Busyn also states that thru his own experience, he believes the retaining wall back further creates a better situation. Mr. Sullivan states that from the southeast corner of the lot, everything is swaled to go around to the north side and he is pitching that yard to the north and a large eave coming down on the south side, so most of the water goes east and west. More grass, more percolation, pitching yard to the north, water goes east & west. Gravel & sand will allow for more percolation. And, in Edina, push more water towards the street, even though the Watershed District might disagree, but if a sand base, it is just going to go below. Sump pump change in direction on the north side is a huge improvement (recommend a battery backup, if runs a lot). Grade on the south side, with water hitting that, will need to establish swale between his property and the Grotz property, and it would go toward the street. Little eyebrow will be guttered (below the top gable). It appears that much effort has been done to mitigate the issue.

Lori Grotz questioned Mr. Sullivan about the 300 sq. ft. of stone to be re-used for patio in the backyard on the south side and will that be graded to drain to the north. He states that they will have to see, but reassured that they are not going to dump water on the Grotz's property.

Again, Scott reassured that Mr. Sullivan is making every effort for drainage and agrees with Building Official David Fisher, on his reports and recommendations. The takeaway should be that nobody here wants to leave Jim & Lori Grotz with a problem and this has added more urgency on Mr. Sullivan's part.

Kip Peterson asked on the grading and drainage plan if the retaining wall is reflected on that plan. David Fisher commented that Mr. Sullivan would have to give us a revised plan, since drainage plan was approved w/o the retaining wall on it.

Kip Peterson motioned to dismiss the 1st appeal. He is sympathetic to the overall height, but doesn't think it is a building code issue. As Mr. Fisher has indicated, it is a planning issue, in terms of how they calculated the setback. Doug Hall seconded that motion.

Scott motioned to deny item II, but expectations are that the drainage plan be met, as part of final inspection process. Also, dismiss Item III, but need good legal information and can be elevated within the council, regarding procedural changes with the city and how plans can be viewed.

Kip Peterson states that the copyright issue needs to be explored.

Doug Hall states that the drainage issue resonates, the copyright issue should not be discussed here, and stone construction is more an aesthetic thing. Neighborly outreach needs to take place. Work with staff for amicable outcome. Mr. Sullivan was heard loud and clear.

Scott Busyn summarizes the Board's decisions on the (3) items before them.

1) Dismiss Item I, due to meeting city requirements, it does not fall within the Board's jurisdiction, it is a planning issue. 2) Deny item II, since a storm water management plan exists. However we advise the builder to meet the specifications of that plan. 3) Dismiss Item III, because it does not fall within the scope of the Construction Board of Appeals. However, we recommend that the applicant bring up the issue with legal council.

Roger Knutson states that we are adopting the findings of fact, with the two additions - 1) the builder meet the specifications of the storm water management plan, 2) applicant ask Roger Knutson to review the iPad finding.

2nd the motion – Doug Hall

All Board members voted aye; motion carried.

David Fisher further explained at the close of the meeting that there are handouts and guidelines put out there to make it easier for builders to understand. We all need to understand, though, that these are policies and guidelines, but not the law. The Dept. of Labor & Industry website also has some interesting information available for things to be aware of, such as examples of what has happened in the past in other communities, in order to better understand what you are doing within the Construction Board of Appeals.

Scott Busyn states that he appreciates all of the Board member's participation. Edina has seen some growth pains and communication goes along way. It is important to be good neighbors. Mr. Grotz thanks the Board for hearing his appeal and getting these new concerns on record.

X. Adjournment